

ESTTA Tracking number: **ESTTA232029**

Filing date: **08/21/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

### Opposer Information

Name	William R. Goddard Jr.		
Entity	Individual	Citizenship	UNITED STATES
Address	10879 U.S. Highway 177 Ardmore, OK 73402 UNITED STATES		

Attorney information	Phillip L. Free, Jr. Crowe & Dunlevy 20 North Broadway, Suite 1800 Oklahoma City, OK 73102 UNITED STATES IPmail@crowedunlevy.com Phone:405-235-7700
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### Applicant Information

Application No	77394954	Publication date	07/22/2008
Opposition Filing Date	08/21/2008	Opposition Period Ends	08/21/2008
Applicant	Goddard Ranch West, LLC Suite 1003 5944 Luther Lane Dallas, TX 75225 UNITED STATES		

### Goods/Services Affected by Opposition

Class 031. All goods and services in the class are opposed, namely: Livestock, namely, horses and cattle
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### Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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### Mark Cited by Opposer as Basis for Opposition

U.S. Application No.	77448674	Application Date	04/15/2008
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	G		
Design Mark			
Description of Mark	The mark consists of a stylized letter "G" with a short horizontal bar protruding out of the left side of the "G".		
Goods/Services	Class 031. First use: First Use: 1988/01/01 First Use In Commerce: 1988/01/01		

	Livestock
Related Proceedings	CIV-08-721-D; U.S.District Court for the Western District of Oklahoma
Attachments	77448674#TMSN.jpeg ( 1 page )( bytes ) Goddard Notice of Opposition.PDF ( 14 pages )(506580 bytes )

### **Certificate of Service**

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Phillip L. Free, Jr./
Name	Phillip L. Free, Jr.
Date	08/21/2008

DEPOSITED ON: AUGUST 21, 2008

TRADEMARK  
DKT NO.: I1102US31

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of trademark application Serial No. 77/394,954

For the mark: GW (DESIGN MARK)

Published in the Official Gazette on: July 22, 2008

WILLIAM R. GODDARD, JR.

Opposer,

v.

GODDARD RANCH WEST, LLC  
a Texas Limited Liability Company

Applicant.

Opposition No. \_\_\_\_\_

Commissioner for Trademarks  
P.O. Box 1450  
Alexandria, VA 22313-1450

**NOTICE OF OPPOSITION**

William R. Goddard, Jr. ("Opposer"), with a principal place of business at 10879 U.S. Highway 177, Ardmore, OK 73402, opposes registration of the mark GW (DESIGN), Serial No. 77/394,954, published in the Official Gazette of July 22, 2008.

The grounds for opposition are as follows:

1. On February 12, 2008, Applicant filed an application under 15 U.S.C. § 1051(b) to register the following mark on the Principal Register for "Livestock, namely horses and cattle" in class 031 (the "Paddle GW" mark):




The application stated that Applicant had a *bona fide* intent to use Applicant's paddle GW mark in commerce.

2. Since at least as early as 1988, Opposer has extensively and continuously used the following mark in his ranching business, including without limitation as a brand for the sale of livestock (the "Paddle G" mark):



3. By reason of Opposer's activities over an extended period of time, Opposer's Paddle G mark has become well known to the relevant public as identifying and distinguishing Opposer, Opposer's business, and Opposer's goods from those of others. Opposer, through significant expense and quality control, has created, and is the owner of, substantial goodwill, consumer recognition and reputation in the Opposer's mark for the quality of its livestock.

4. Opposer has filed an application under 15 U.S.C. § 1051(a) to register the Paddle G mark on the Principal Register on the basis of Opposer's long-standing use of the mark in commerce:

<u>Reg. No. or Serial No.</u>	<u>Mark</u>	<u>Class</u>	<u>Goods/Services</u>
77/448,674		31	Livestock

5. Applicant is located in the same geographic trade area and intends to use its Paddle GW mark for the same goods as Opposer uses his Paddle G mark. Given the geographic proximity, Applicant will be targeting the same consumers as Opposer. Such consumers are likely to consider the goods of Applicant rendered under Applicant's mark as emanating from or related to Opposer and engage such goods as those of the Opposer, potentially resulting in lost sales. Moreover, concurrent use of Opposer's mark and Applicant's mark may result in irreparable damage to Opposer's reputation and goodwill because consumers are likely to attribute the source or affiliation of Applicant's goods to Opposer.

6. Applicant's mark is substantially identical in appearance, sound and connotation to Opposer's mark. Applicant's mark so resembles Opposer's mark as to be likely, when used in connection with the goods identified in the application for Applicant's mark, to cause confusion, to cause mistake, or to deceive the consuming public. Applicant's mark should be found to be unregistrable under § 2(d) of the United States Trademark Act, 15 U.S. C. § 1052(d), as amended.

7. Due to the similarities in Applicant's mark and Opposer's mark, the similarities in the services used with the respective marks, and the overlap in consumers who purchase goods related to the respective marks, Applicant's mark is likely to be confused with and mistaken for Opposer's mark, so as to cause confusion and lead to deception as to source, sponsorship, or affiliation by the consuming public.

8. Opposer believes it will be damaged by registration of Applicant's mark because such registration would give Applicant at least a *prima facie* exclusive right to use Applicant's confusingly similar mark in commerce in the United States, in derogation of Opposer's rights in Opposer's mark. Because Opposer has priority of use of Opposer's mark, Applicant will obtain a federal registration to which it is not entitled, and which is inconsistent with Opposer's prior rights.

9. Opposer, on July 15, 2008, filed a civil suit in The Western District of Oklahoma against Applicant complaining of trademark infringement and seeking relief under the Lanham Act. (See attached Complaint, CIV-08-721-D)

10. The filing fee in the amount of \$300.00 to oppose Applicant's mark is enclosed herewith. Please charge any deficiency or credit any overpayment to Deposit Account No. 13-0110 and direct all correspondence in connection with this opposition to the undersigned.

WHEREFORE, Opposer believes it will be damaged by registration of Applicant's mark and respectfully requests that the opposition be sustained and that registration be refused.

Respectfully submitted,

By: 

Phillip L. Free, Jr., OBA #: 15765

David M. Sullivan, OBA # 18851

Marie S. Johnston, OBA # 19847

Drew T. Palmer, OBA # 21317

- Of the Firm -

CROWE & DUNLEVY, P.C.

20 N. Broadway, Suite 1800

Oklahoma City, OK 73102

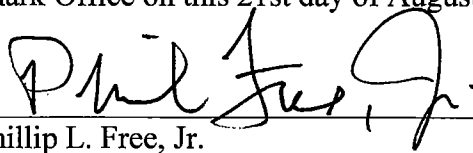
(405) 235-7700

(405) 239-6651 (Fax)

ATTORNEY FOR OPPOSER  
WILLIAM R. GODDARD, JR.

### **CERTIFICATE OF TRANSMISSION**

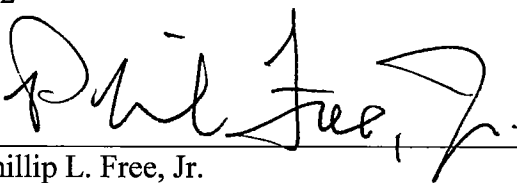
I hereby certify that this correspondence is being electronically transmitted via ESTTA to the United States Patent and Trademark Office on this 21st day of August, 2008.

  
\_\_\_\_\_  
Phillip L. Free, Jr.

### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing *Notice of Opposition* was mailed first class mail, postage prepaid, this 21st day of August, 2008 to the following:

Charles M. Hosch  
Strasburger & Price, LLP  
901 Main Street, Suite 4400  
Dallas, TX 75202

  
\_\_\_\_\_  
Phillip L. Free, Jr.

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

Goddard Ranch,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No.
	)	
Goddard Ranch West, LLC,	)	
	)	
Defendant.	)	
	)	

**COMPLAINT**

Plaintiff, Goddard Ranch, alleges as follows:

**THE PARTIES**

1. Plaintiff, is a sole proprietorship with its principal place of business located at 10879 U.S. Highway 177 Ardmore, Oklahoma 73402.

2. Defendant, Goddard Ranch West, LLC, is a limited liability company organized and existing under the laws of Texas with its principal place of business located at 1928 U.S. Highway 177, Ardmore, Oklahoma 73401.

**JURISDICTION AND VENUE**

3. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338, and 15 U.S.C. § 1121, as a civil trademark action arising under the Lanham Act. Personal Jurisdiction is proper under the Oklahoma long-arm statute, 12 O.S. § 2004(F), based upon Defendants' contacts with this jurisdiction, including Defendants' sale of goods in this state.



4. Venue lies in this district pursuant to 28 U.S.C. § 1391, because the defendant Goddard Ranch West, LLC is subject to personal jurisdiction within this judicial district by way of having a registered agent, the Oklahoma Secretary of State, within this judicial district.

### **FACTS**

The allegations of paragraphs 1-4 are repeated and realleged as if set forth fully herein.

5. Plaintiff owns and operates various livestock and ranching businesses, including a commercial Hereford and F-1 replacement cow operation and a quarter horse breeding operation, at its principle place of business. Since at least 1988, Plaintiff has continuously used its GODDARD RANCH word mark and its "Paddle G" design mark<sup>1</sup> in connection with its livestock and ranching businesses. On April 15, 2008, Plaintiff filed applications to register the GODDARD RANCH word mark and the Paddle G design mark on the principal register of the United States Patent and Trademark Office (the "USPTO").

6. For over two decades, Plaintiff has advertised its goods and services in various trade publications target at the livestock and ranching industry. Consumers recognize the GODDARD RANCH and Paddle G marks as identifying a distinct source for Plaintiff's goods and services.

7. Defendant operates various livestock and ranching businesses at its principle place of business. Defendant recently began using the GODDARD RANCH

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<sup>1</sup> A copy of the Plaintiff's Paddle G mark is attached as Exhibit 1.

WEST word mark and the "Paddle GW" design mark<sup>2</sup> in connection with Defendant's livestock and ranching businesses. On February 12, 2008, Defendant applied to register its Paddle GW design mark on the USPTO's principal register, in connection with livestock, namely, horses and cattle.

8. Defendant's use of the GODDARD RANCH WEST mark is creating actual confusion in the marketplace as to the source of Defendant's and Plaintiff's goods and services. On several instances, consumers have contacted the Plaintiff, believing it to be the Defendant. Within the past few months, the Plaintiff has received mail intended for Defendant, but addressed and delivered to the Plaintiff.

9. The confusion caused by Defendant's use of the GODDARD RANCH WEST and Paddle GW marks has and will continue to damage Plaintiff's business.

**COUNT 1:  
FALSE DESIGNATION OF ORIGIN AND FALSE DESCRIPTION IN  
VIOLATION OF 15 U.S.C. § 1125(A)**

The allegations of paragraphs 1-8 are repeated and realleged as if set forth fully herein.

10. Defendant's use of the GODDARD WEST RANCH and Paddle GW marks is a use in interstate commerce of words and/or symbols, a false designation of origin, and/or a false description or representation. Such use has misled and deceived, and will continue to mislead and deceive, the public into believing that the Defendant's goods and services originate from the Plaintiff, is licensed by the Plaintiff, or is in some way sanctioned by or otherwise affiliate with, the Plaintiff.

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<sup>2</sup> A copy of the Defendant's Paddle GW mark is attached as Exhibit 2.

11. Defendant's unauthorized association of its goods and services with the Plaintiff has resulted in profits to the Defendant and has thereby deprived the Plaintiff of revenue to which it is entitled.

12. By so imitating, counterfeiting and infringing the Plaintiff's marks in interstate commerce, the Defendant has violated Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

13. By reason of the foregoing, the Plaintiff has been injured in an amount not yet ascertained and is entitled to the remedies provided for in 15 U.S.C. § 1116 *et seq.*

**COUNT 2:**

**DECEPTIVE TRADE PRACTICE IN VIOLATION OF 78 O.S. § 51 ET SEQ.**

The allegations of paragraphs 1-12 are repeated and realleged as if set forth fully herein.

14. Defendant, through its use of the GODDARD RANCH WEST and Paddle GW marks has passed off its goods and services as those of the Plaintiff.

15. Defendant, through its use of the GODDARD RANCH WEST and Paddle GW marks has knowingly made a false representation as to the source, sponsorship, approval or certification of its goods and services.

16. Defendant, through its use of the GODDARD RANCH WEST and Paddle GW marks has knowingly made a false representation as tot affiliation, connection, association with, or certification by another.

17. Such use by the Defendant was willful and constitutes a deceptive trade practice in violation of the Oklahoma Deceptive Trade Practices Act, 78 O.S. § 51 *et. seq.*

18. By reason of the foregoing, the Plaintiff has been injured in an amount not yet ascertained and is entitled to the remedies set forth in 78 O.S. § 53.

**COUNT 3:  
UNFAIR COMPETITION**

The allegations of paragraphs 1-17 are repeated and realleged as if set forth fully herein.

19. Defendant's use of the GODDARD WEST RANCH and Paddle GW marks constitute passing off, infringement and misappropriation of the Plaintiff's GODDARD RANCH and Paddle G marks, actionable under the laws of unfair competition.

20. By reason of the foregoing, the Plaintiff has been injured in an amount not yet ascertained, and is entitled to monetary and equitable remedies.

**RELIEF REQUESTED**

21. Pursuant to 15 U.S.C. § 1116 and 78 O.S. § 54(A), Plaintiff requests that this Court grant an injunction prohibiting the Defendant from using in commerce the GODDARD WEST RANCH mark, the Paddle GW mark, or any other mark that is likely to be confused with the Plaintiff's GODDARD RANCH and Paddle G marks.

22. Pursuant to 15 U.S.C. § 1117(a) and 78 O.S. § 54, Plaintiff requests that this Court grant it monetary relief in an amount not less than the sum of: (a) the Defendant's profits; (b) all damages sustained by Plaintiff; and (c) the costs of this action.

23. Pursuant to 15 U.S.C. § 1118, Plaintiff requests that all materials and goods upon which Defendant has placed its GODDARD WEST RANCH and Paddle GW mark be delivered up and destroyed.

24. Pursuant to 15 U.S.C. § 1119, Plaintiff requests that the Court order the Director of the USPTO to refuse registration of the Defendant's application (U.S. Serial No. 77,394,954) to register the Paddle GW mark on the principal register.

25. Pursuant to 15 U.S.C. § 1117(a) and 78 O.S. § 54(C), Plaintiff requests that this Court grant Plaintiff its attorneys' fees, costs and expenses.

D. Plaintiff further requests that this Court grant such other relief as it deems just and proper.

**JURY TRIAL DEMANDED**

Respectfully submitted,

s/ Drew T. Palmer

Mack J. Morgan III , OBA #6397

Phillip L. Free Jr., OBA #15765

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Exhibit 1



Exhibit 2

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